

26 MAY 1947

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of
WITNESSES

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I N D E X
of
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Defense' Witnesses

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OGISU, Rippei

23025

Direct by Mr. Blakeney

23025

Cross by Colonel Smirnov

23037

26 MAY 1947

I N D E X
Of
EXHIBITS

<u>Doc. No.</u>	<u>Def. No.</u>	<u>Pros. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
None	2648		Book (in Japanese) entitled "Reference on Tactical Activities"	22966	
1576	2649		Excerpt from "Treaties Between China and England, America, France and Russia" Treaty Bureau, Foreign Ministry (pp.2292-2294)		22975
1601	2650		Affidavit of YANO, Mitsuji		22993
None	2651		Book entitled "History of Nomadic Life in Mongolia"	22999	
None	2652		Book entitled "Holom- bair"	23000	
1601-C	2653		Japanese General Staff Office Map of Eastern Asia	23000	
None	2654		Book entitled "Mongolian Topography"	23002	
1604	2655		Affidavit of HATTORI, Takushiro		23014
1376	2656		Affidavit of OGISU, Rippe		23029

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1 Monday, 26 May 1947

2 - - -

3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 - - -

12 Appearances:

13 For the Tribunal, same as before with the
14 exception of: HONORABLE JUSTICE NORTHCROFT, Member
15 from New Zealand and HONORABLE JUSTICE JU-AO MEI,
16 Member from the Republic of China, now sitting.

17 For the Prosecution Section, same as before.

18 For the Defense Section, same as before.

19 - - -

20 (English to Japanese and Japanese
21 to English interpretation was made by the
22 Language Section, IMTFE.)
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1 MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now in session.

2 THE PRESIDENT: Major Furness.

3 MR. FURNESS: I think the witness TANAKA was
4 on the stand at the time the session ended on Friday.
5 He is in the witness room.

6 THE PRESIDENT: It has been pointed out to me
7 that copies of exhibit 2175 have not yet been distributed
8 among the Judges. That must be done forthwith.

9 MR. FURNESS: That, of course, your Honor, is
10 a document introduced by the prosecution.

11 THE PRESIDENT: I am aware of that.

12
13 R Y U K U C H I T A N A K A, called as a witness on
14 behalf of the defense, resumed the stand and
15 testified through Japanese interpreters as follows:

16 CROSS-EXAMINATION

17
18 GENERAL VASILIEV: First I want to clear up
19 the matter concerning exhibit 2175. I have already
20 explained to the Honorable Tribunal that this exhibit
21 is absolutely identical with exhibit 753 with only one
22 difference, that this exhibit is a full map -- full
23 scale map. When this map was produced there was no
24 wish on the part of the defense and on the part of the
25 Honorable Tribunal to obtain a copy of this exhibit.

1 I now take measures that in a few days these copies be
2 processed and served upon the defense and the honorable
3 Members of the Tribunal.

4 May I continue my cross-examination?

5 THE PRESIDENT: You may.

6 BY GENERAL VASILIEV (Continued):

7 Q Mr. Witness, on Friday you testified that
8 according to the established practice in the Japanese
9 Army, a cross sign meant the place at which clash
10 between troops occurred, is that so?

11 THE PRESIDENT: He said it was.

12 A I didn't say combat area. I did not say so.
13 I said it was a sign indicating the point of clash
14 between two forces.

15 THE PRESIDENT: Obviously what the General
16 said was misinterpreted to him.

17 Q I ask you to look through this book and later
18 we shall speak with you about this book.

19 (Whereupon, a book was handed to the
20 witness.)

21 MR. FURNESS: If the Court please, I ask that
22 the book be marked for identification.

23 THE PRESIDENT: I said that can be done at any
24 time convenient to the prosecutor or the person handing
25 the book to the witness.

1 Q Read its title please.

2 A "Reference on Technical Activities."

3 Q Maybe I haven't heard the title correctly.

4 It is "Practical Instructions on Tactics," isn't that
5 so?

6 MR. FURNESS: Your Honor, I object for obvious
7 reasons.

8 THE PRESIDENT: Why this waste of time about
9 this simple matter of handing a book to the witness
10 and asking him what it is and what its contents are
11 and whether he agrees or disagrees with any of them?
12 That is done every day and no time is wasted.

13 Q I ask you to confirm that this book is
14 "Practical Instructions upon Tactics" designed for the
15 Japanese Army.

16 A I do not confirm that.

17 THE PRESIDENT: That is the end of it.

18 Q Then what is this book? What is its title?

19 A This is a non-authoritative book published
20 by some book publisher to sell in the city book shops
21 to make money. It is a purely civilian enterprise and
22 has no authoritative value. It is not a text book.

23 Q You did not answer my question. We will deal
24 with your answer later.

25 Now will you first tell me what is the title

TANAKA

CROSS

1 of this book? Read its title in Japanese, please.

2 A Sakusen Sagyo No Sanko.

3 THE PRESIDENT: We want to know in English
4 what the witness said in Japanese.

5 THE INTERPRETER: "References on Tactical
6 Practices or Activities."

7 Q In what year was this book published?

8 A January 31, 1942 -- January 30.

9 Q They gave me two translations of your answer --
10 two years of the publish of this book, 1930 and 1942.
11 Which one is the correct one?

12 A It is Showa 17, so that would be 1942.

13 Q Who is the author of the book, or who compiled
14 this book?

15 A The name of the editor, publisher and printer
16 is stated as MAEDA, Iwataro.

17 Q It is said there that this book was compiled
18 by the Society for the Study of Military Science, was
19 not it so? Look at the book attentively.

20 A On the title it says "Society for the Study
21 of Military Science," or something of that nature, but
22 the party legally responsible for the publication of
23 this book is MAEDA, Iwataro who is given as the editor,
24 publisher and printer.

25 Q Thus the book was compiled by the Society for

TANAKA

CROSS

1 the Study of Military Science. Tell me, is it indicated
2 in the book that it was taken from the Imperial
3 Japanese Library?

4 A Legally speaking, I still insist that the
5 responsible party is MAEDA, Iwataro, but in as much
6 as the seal of the Imperial Library is affixed to this
7 book I recognize that it was brought from that library.

8 Q Look at page 653. Does this page contain
9 any cross sign in the nature of X? Is there any such
10 sign there?

11 A Yes, I notice it.

12 Q Read what is the explanation given for this
13 sign.

14 A Section of destruction of constructed matter
15 such as railways and bridges. Also the cutting down of
16 trees. That is the section for the cutting down of
17 trees. Supply point other than --

18 THE INTERPRETER: Delete the last portion.

19 Q Look at page 660. Is there the same cross
20 sign there for this page?

21 A Yes.

22 Q Read what it means.

23 A It says, "Point of supply other than main supply
24 point."

25 A We couldn't find any other sign of X or cross

TANAKA

CROSS

1 sign in the whole list of signs. Look for yourself.
2 Maybe you will have better luck than we had.

3 Haven't you found it?

4 A I do not place any credibility in a book
5 published by some book keeper or book publisher in the
6 city.

7 Q I did not ask you that.

8 A I have more to say on that point.

9 Q Witness, it is for the Tribunal to decide
10 whether the book has importance or not. You must
11 answer my question.

12 A I should like to avoid trying to read this
13 book which is more than 600 pages long. It would take
14 considerable time of the Court.

15 Last Friday I testified that the point of
16 clash of two opposing troops was indicated by the
17 crossing of two swords, a cross mark made with two
18 swords with the scabbard on. And then I added that
19 in order to simplify the sign the scabbard was removed
20 and the simple cross sign was used. I should like to
21 have you recall that. I should also like to have you
22 recall that I said that this was a long established
23 practice. This book does not include all of the various
24 signs and markings used.

25 This is also a book published by a non-responsible

TANAKA

CROSS

1 irresponsible city book show. I should like to avoid
2 referring to an irresponsible book of this kind before
3 a tribunal which places the utmost emphasis on truth
4 and accuracy.

5 THE PRESIDENT: Well, you have said enough
6 about the book and your opinion of it for the time
7 being.

8 Q May the witness be shown exhibit 2642 which
9 is a sketch map of the Lake Khasan area made in hand
10 or made by hand -- exhibit 2642? I gave you my copy
11 served upon me by the defense.

12 (Whereupon, a map was handed to the
13 witness.)

14 MR. FURNESS: If your Honor please, I would
15 like to have him shown the exhibit itself or a photo-
16 static copy, and I don't think that is a photostatic
17 copy which he has in his hand.

18 THE PRESIDENT: We should have exhibit 2462.
19 Mr. Lynch, you have that exhibit. You have every
20 exhibit, or you should have.

21 The clerk of the court received no notice
22 that it would be required this morning and that is
23 why it is not in court.

24 Q Mr. Witness, maybe you remember that looking
25 at this exhibit you testified that according to the

TANAKA

CROSS

1 sketch map the border line passes not along the summit
2 of the northern hill but along the foot of this hill.

3 THE PRESIDENT: Well, wait until the original
4 is available.

5 A Which map?

6 THE PRESIDENT: Do not answer yet until the
7 map about which you are being examined is placed before
8 you, being the map now in evidence.

9 THE WITNESS: Yes, I shall wait.

10 (Whereupon, a map was handed to the
11 witness.)

12 Q I repeat my question. The border line as
13 shown on this sketch map passes not along the summit
14 of the northern hill but along the foot of this hill,
15 is not it so?

16 MR. FURNISS: I object. I think the prosecutor
17 does not state what the witness testified.

18 THE PRESIDENT: Well, it must be put to him
19 properly.

20 A I shall reply. This sketch map, without any
21 scale, was drawn by a staff officer purely out of
22 memory. This map, without any scale, without any
23 compass, was sketched purely out of memory by a staff
24 officer. However, according to this map drawn from
25 memory it appears that the border line passes through

TANAKA

CROSS

1 the east side of the hill.

2 THE PRESIDENT: Major Furness.

3 MR. FURNESS: I object to this line of question-
4 ing on the ground that it is outside the scope of the
5 direct examination. I did not ask him what this was
6 a map of. I did not ask him anything except what
7 certain signs on the map meant and it is my contention
8 that the cross-examination should be confined to that.

9 THE PRESIDENT: Do you contend that this
10 arises out of the cross-examination -- out of the
11 direct examination, General Vasiliev?

12 GENERAL VASILIEV: My contention is, your
13 Honor, that if the defense counsel asks about a legend
14 on the map I have the right to ask about the same --
15 all the signs on the map.

16 THE PRESIDENT: He was called to testify about
17 the meaning of markings on the map but not these
18 particular markings, if I understand correctly.

19 The objection is upheld.

20 GENERAL VASILIEV: Then I want only to draw
21 the attention of the Honorable Members of the Tribunal
22 to the fact that this map contradicts the map attached
23 to the Hunchun Agreement and is something in between,
24 neither the Japanese version nor the Russian one, and
25 simply has no probative value.

TANAKA

CROSS

1 That is all, your Honor. I have no questions.

2 MR. FURNESS: Of course, if your Honor please,
3 those are questions for the Tribunal to decide; not
4 the prosecution.

5 THE PRESIDENT: The book should be marked
6 for identification.

7 GENERAL VASILIEV: I ask to make this book
8 for identification.

9 CLERK OF THE COURT: The book printed in
10 Japanese, styled "Reference on Tactical Activities,"
11 will receive exhibit No. 2648 for identification
12 only.

13 (Whereupon, the book above referred
14 to was marked prosecution's exhibit No. 2648
15 for identification.)
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REDIRECT EXAMINATION

BY MR. FURNESS

Q General TANAKA, under Japanese law is it required that any book print at the end of it the name of the person legally responsible for it?

A Yes.

Q And your testimony that MAEDA, Iwataro is the person responsible, legally responsible for it is based on something in that book?

A Yes.

THE PRESIDENT: General Vasiliev.

GENERAL VASILIEV: I object to this line of questioning as to the matters concerned with the publishing of this book. This witness has no qualifications and he should not be asked such questions.

THE PRESIDENT: These questions arise out of the cross examination clearly, and are admissible. The objection is overruled.

Q Where in the book is that indicated?

A The last page.

Q Was that book used as a text book by army officers?

A No.

TANAKA

REDIRECT

1 Q Does the fact that it comes from the
2 Imperial Library indicate that it has any official
3 status?

4 A No it does not.

5 Q Now, regardless of the fact that that book
6 says that cross signs mean certain things, is it a
7 fact that it is the practice of the Japanese army
8 to use them to indicate points of conflict?

9 THE PRESIDENT: He need not answer again.
10 He already said so.

11 MR. FURNESS: May the witness then be
12 released on the usual terms, your Honor?

13 THE PRESIDENT: He is released accordingly.

14 (Whereupon, the witness was
15 excused.)

16 MR. FURNESS: Your Honor please, there are
17 certain matters still to be dealt with in the sub-
18 division of the defense's case on the Russian phase.
19 I mean the sub-division relating to the Changkufeng
20 incident. One is the question of the Annex to the
21 Hunchun Protocol, the witness, HAYASHI, and the
22 Litvinov Diary of August 10th and 11th, which the
23 prosecution tells me they are going to give me. Also
24 there is left the re-examination of the witness,
25 HASHIMOTO GUN, after the prosecution has furnished

1 the defense and the Tribunal with the map which was
2 attached to the original of Exhibit 766. I still
3 have a few witnesses which have not yet been avail-
4 able and I am not certain when they will be available,
5 but I will try to produce them as soon as possible.

6 THE PRESIDENT: What is the reason for their
7 non-production now, Major Furness?

8 MR. FURNESS: Some are ill but we expect
9 they will get well, others we have not been able to
10 prepare the affidavits yet. There may be other
11 matters revealed in the record, but I think I have
12 covered them all. With that in mind, Mr. Blakeney
13 will now carry on the next phases of the defense on
14 the Russian phase.

15 THE PRESIDENT: Major Blakeney.

16 MR. BLAKENEY: If the Tribunal please, the
17 next point to be made the object of evidence is the
18 Nomonhan, or Khalkin-Gol incident. I shall first
19 offer in evidence, as proof that the territory in
20 which the soi-disant Mongolian People's Republic was
21 established not only was indisputably Chinese, but
22 had been expressly recognized to be such by the
23 U.S.S.R., DD1576, being excerpts from the convention
24 signed in Peking in 1924 between the U.S.S.R. and the
25 Republic of China.

TANAKA

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21 established not only was indisputably Chinese, but
22 had been expressly recognized to be such by the
23 U.S.S.R., DD1576, being excerpts from the convention
24 signed in Peking in 1924 between the U.S.S.R. and the
25 Republic of China.

1 THE PRESIDENT: General Vasiliev.

2 GENERAL VASILIEV: May I ask a question to
3 find out for what purpose is this document presented,
4 and what is the purpose of this document?

5 THE PRESIDENT: I am afraid you will have to
6 leave that to the Bench, if they are in doubt,
7 General. You can raise any objection you like.
8 Major Blakeney gave his reason. Are you going to
9 object to it?

10 GENERAL VASILIEV: I don't see that this
11 document has any relevancy to the issues of the case.

12 THE PRESIDENT: You object to it on the
13 ground of irrelevancy. Major Blakeney, what do you--

14 GENERAL VASILIEV: Yes, your Honor, that is
15 quite correct, your Honor.

16 THE PRESIDENT: Major Blakeney, we will
17 hear you.

18 MR. BLAKENEY: I think the document is
19 clearly relevant for at least four reasons which I
20 shall state seriatim.

21 Firstly, Minister Golunsky, in his opening
22 of the Russian phase for the prosecution, stated on
23 page 7254 of the record that Japan - "knew well of
24 the existing treaty of mutual assistance between
25 the Soviet Union and the Mongolian People's Republic.

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22 of the Russian phase for the prosecution, stated on
23 page 7254 of the record that Japan - "knew well of
24 the existing treaty of mutual assistance between
25 the Soviet Union and the Mongolian People's Republic.

1 They knew beforehand that an attack on the territory
2 of this Republic would inevitably lead to a clash
3 of arms with the Soviet Union and consciously were
4 ready to do it." That is the end of the quotation.
5 The Nomonhan incident is thus charged as aggression
6 against the U.S.S.R but if the territory involved
7 was Chinese, the Tribunal may well wonder a little
8 how the case is made out. Japan knowing well that
9 the U.S.S.R's solemn recognition by treaty of the
10 China Sovereignty over outer Mongolia, could in no
11 way have supposed that frontier troubles of outer
12 Mongolia would in any way involve a foreign power.

13 Secondly, I shall presently, on the question
14 of the Manchurian Mongolian frontier or boundary,
15 offer some evidence from Chinese sources. Clearly,
16 the weight to be attached to this evidence may
17 depend to some extent upon the question of sover-
18 eignty over the territory involved. That is, the Chinese
19 can speak of the boundaries of their own country with
20 more authority than those of a foreign country.

21 Thirdly, the evidence has shown, and will
22 show that much of the national and especially military
23 policy of Japan was conditioned by what was considered
24 to be the Soviet menace of which Japan was never
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22 show that much of the national and especially military
23 policy of Japan was conditioned by what was considered
24 to be the Soviet menace of which Japan was never
25 unconscious. Japan may well indeed have been moved

1 to take military measures of self-defense by the
2 discovery that the U.S.S.R. was even extending it's
3 military threat by establishing and entering into a
4 military alliance with puppet states on the periphery
5 of Manchuria.

6 And, fourthly, the Soviet encroachment in
7 outer Mongolia has a bearing on the question whether the
8 Nine Power Treaty, Prosecution's Exhibit 28, had
9 become a dead letter, for while the U.S.S.R. was
10 not a signatory of that treaty, nevertheless, it's
11 action in violation thereof could but effect
12 alteration of the fundamental conditions in which,
13 and the hypothesis upon which that treaty which the
14 defendants are charged with violating was grounded.
15 That is my submission, your Honors.

16 GENERAL VASILIEV: Might I be allowed to
17 say a few words?

18 THE PRESIDENT: Well there is no objection,
19 go ahead. We have prevented Mr. Keenan from replying
20 where he opened the debate. If the defense have no
21 objection we will hear you. If they have, we must
22 not allow you.

23 MR. BLAKENEY: No objection whatever.
24
25

TANAKA

REDIRECT

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20 where he opened the debate. If the defense have no
21 objection we will hear you. If they have, we must
22 not allow you.

23 MR. BLAKENEY: No objection whatever.
24
25

1 GENERAL VASILIEV: I wanted to ask the
2 honorable Members of the Tribunal to pay their attention
3 to the following circumstances, circumstances relating
4 to the tactics adopted by the defense and which encroach
5 upon my rights.

6 The document has been presented without explana-
7 tion given for what purpose it is presented -- it has
8 been presented. Therefore, I objected to the introduc-
9 tion of this document in general form.

10 Replying to me the defense gave their explana-
11 tion consisting of four points. Naturally, it throws
12 new light upon the question, and, therefore, I address
13 the Court asking the permission to reply because I
14 know that usually it is not allowed to reply for the
15 second time.

16 THE PRESIDENT: At some stage or other the
17 Court may see fit to prevent a reply even if the defense
18 does not object. But this does not appear to be a point
19 on which we should do that.

20 GENERAL VASILIEV: Thank you, your Honor.

21 So first the purpose of the presentation of
22 this document is the wish on the part of the defense to
23 question the sovereignty of the Mongolian People's Republic.
24 And, secondly, as far as I understood, it is an attempt
25 to prove that the U.S.S.R. is allegedly an aggressive

1 party in her relations to China and violated the treaties
2 concluded with China.

3 The question of relations between the U.S.S.R.,
4 China and the Mongolian People's Republic has no rele-
5 vancy whatsoever to the issues of this case. At any
6 rate it is not up to the Japanese war criminals to take
7 upon themselves the defense of the interests of China
8 and Mongolian People's Republic.

9 THE PRESIDENT: You must not refer to the
10 accused as Japanese war criminals. They have not yet
11 been convicted.

12 GENERAL VASILIEV: As far as I understand
13 they were brought before this Tribunal as Japanese war
14 criminals, major Japanese war criminals. Maybe I am
15 mistaken, I don't know. But so far I was not mistaken.

16 THE PRESIDENT: That is not so. And as far
17 as we are concerned they are innocent until they are
18 proved guilty.

19 GENERAL VASILIEV: I am of the same opinion,
20 your Honor. But the defense defend the interests of the
21 Japanese war criminals, and, therefore, I call them this
22 name. I am not going to say that this question is
23 settled.

24 In my submission the defense has no right to
25 question the sovereignty of the Mongolian People's

1 Republic. Besides this question is out of the scope of
2 jurisdiction of this Tribunal under the Charter.

3 It is a fact of common knowledge known to the
4 whole world that by a plebiscite the people of the Mon-
5 golian People's Republic last year once more confirmed
6 their separate independence from China state existence
7 and China agreed to it. There was no other interpreta-
8 tion of this question.

9 On these grounds I ask the honorable Tribunal
10 to reject the document because it purports to mislead
11 the Tribunal.

12 THE PRESIDENT: By a majority, the Court
13 rejects the contention of the prosecution and admits
14 the document on the usual terms.

15 CLERK OF THE COURT: Defense document 1576
16 will receive exhibit No. 2649.

17 (Whereupon, the document above
18 referred to was marked defense exhibit No.
19 2649 and received in evidence.)

20 MR. BLAKENEY: I read the exhibit.

21 "Signed at Peking May 31, 1924."

22 The excerpts are Articles IV and V.

23 "The Government of the Union of Soviet Socialist
24 Republics, in accordance with its policy and Declarations
25 of 1919 and 1920, declares that all Treaties, Agreements,

1 et cetera, concluded between the former Tsarist Govern-
2 ment and any third party or parties affecting the sover-
3 eign rights or interests of China, are null and void.

4 "The Governments of both Contracting Parties
5 declare that in future neither Government will conclude
6 any treaties or agreements which prejudice the sovereign
7 rights or interests of either Contracting Party.

8 "Article V. The Government of the Union of
9 Soviet Socialist Republics recognizes that Outer Mongolia
10 is an integral part of the Republic of China and respects
11 China's sovereignty therein.

12 "The Government of the Union of Soviet
13 Socialist Republics declares that as soon as the questions
14 for the withdrawal of all the troops of the Union of
15 Soviet Socialist Republics from Outer Mongolia--namely,
16 as to the time limit of the withdrawal of such troops and
17 the measures to be adopted in the interests of the safety
18 of the frontiers--are agreed upon at the Conference as
19 provided in Article II of the present Agreement, it will
20 effect the complete withdrawal of all the troops of the
21 Union of Soviet Socialist Republics from Outer Mongolia."

22 The mutual assistance pact which in despite
23 of this treaty was entered into with the puppet Mongolian
24 People's Republic, and under color of which Soviet troops
25 were stationed on the soil of China in Outer Mongolia,

1 has been introduced into evidence as prosecution exhibit
2 214, and was read into the record at pages 2,715-18
3 of the transcript. I therefore leave it with this
4 reference to it, and with the comment that it shows that
5 by March 1936 the U.S.S.R. had obtained colorable right
6 to military occupation of Outer Mongolia.

7 On the question of the boundary between
8 Manchukuo and Mongolian People's Republic, I call as a
9 witness YANO, Mitsuji, whose testimony is embodied in
10 defense document 1601.

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1 M I T S U J I Y A N O, called as a witness on behalf
2 of the defense, being first duly sworn, testified
3 through Japanese interpreters as follows:

4 THE PRESIDENT: Mr. Tavenner.

5 MR. TAVENNER: The document was on an order
6 list which was served on us this morning, and the affi-
7 davit has not been served on us, and we, of course, have
8 not seen it. We think in the interest of orderly procedure
9 we should be able to be permitted to read the affidavit
10 before the witness is used.

11 THE PRESIDENT: We will have fifteen minutes
12 in which to read it during the recess.

13 MR. TAVENNER: That is provided we get it.

14 THE PRESIDENT: Well, we won't hear the witness
15 until you do.

16 Take his name and address and other formal
17 parts, Major Blakeney.

18 MR. BLAKENEY: Yes, sir.

19 DIRECT EXAMINATION

20 BY MR. BLAKENEY:

21 Q Mr. Witness, state your name and residence,
22 please.

23 A My name is YANO, Mitsuji. My present address,
24 No. 2431 5-Chome, Kami-Meguro, Meguro-ku, Tokyo.

25 MR. BLAKENEY: I ask that he be handed defense

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1 document 1601.

2 (Whereupon, a document was handed to
3 the witness.)

4 MR. TAVENNER: I object, your Honor, to the
5 tendering of the affidavit until we have had an opportunity
6 to see it.

7 MR. BLAKENEY: The affidavit is not yet ten-
8 dered. The affidavit is to be presented to the witness
9 for his identification.

10 THE PRESIDENT: We will recess for fifteen
11 minutes.)

12 (Whereupon, at 1045, a recess was
13 taken until 1100, after which the proceedings
14 were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Major Blakeney.

4 MR. BLAKENEY: In as much as the question
5 of when affidavits of witnesses must be served is
6 likely to arise again from time to time, perhaps
7 I should state our conception of the regulation
8 upon which we have acted in making our preparations.

9 THE PRESIDENT: It might start a lengthy
10 debate unnecessarily, Major Blakeney. Deal with
11 it when you have to.

12 Were you objecting, Mr. Tavenner?

13 MR. TAVENNER: If the Tribunal please, the
14 prosecution does object to the offering of an affi-
15 davit in evidence before it has an opportunity to
16 examine it and determine to what extent objection
17 should be made and until it has had a reasonable
18 opportunity to make such an examination.

19 THE PRESIDENT: Then, I take it that you
20 are objecting to any affidavit by this witness
21 being tendered now.

22 MR. TAVENNER: Yes, sir. We have not
23 seen a copy of the affidavit.

24 THE PRESIDENT: Well, now, Major Blakeney,
25 you may state your contentions.

1 MR. BLAKENEY: This matter has been the
2 subject of discussion a number of times in chambers
3 and in open court. The question of requiring de-
4 fense witnesses to testify by affidavit first arose
5 in the hearing in chambers on the 20th of March
6 this year. At that time, Mr. Tavenner, being
7 present, made the contention that the affidavits,
8 so required to be prepared, should be served on the
9 prosecution twenty four hours in advance of pre-
10 sentation in court, as if they were documents.

11 It being pointed out by the defense on
12 that occasion that this would compel the disclos-
13 ure of our evidence in advance, the President
14 finally made the following statement or ruling.
15 This is on page 18 of the record of the proceed-
16 ings in chambers on the 20th of March.

17 "For the time being" -- I am quoting the
18 President's words -- "I will exempt you from the
19 obligation, subject to the approval of my brother
20 Judges, to give copies of such affidavits as you
21 are required to furnish to the prosecution and,
22 finally, confine the obligation to the Judges."

23 The actual order requiring affidavits to
24 be used was made in open court on the 25th of
25

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1 March, transcript page 19100. On page 19101 of the
2 transcript, the following colloquy occurred:

3 "MR. ROBERTS: May I inquire if it is the
4 purpose of the Court to have the affidavits served
5 upon the prosecution as well before the witness is
6 produced?

7 "THE PRESIDENT: That point has been raised
8 in chambers. I told you it would be sufficient if
9 you served the Judges."

10 I wish to add only this, that, as the
11 Tribunal is aware, we are not putting our evidence
12 in affidavit form voluntarily or from our prefer-
13 ence. We, therefore, feel that, in the circumstances
14 of our being compelled so to proceed, it would be
15 grossly unfair to us to compel us also to make all of
16 our evidence available to the prosecution in ad-
17 vance. This point was made and fully argued in the
18 hearing in chambers, and I submit that the decision
19 made thereafter is the only correct and just de-
20 cision on this point.

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1 THE PRESIDENT: Mr. Tavenner.

2 MR. TAVENNER: If the Tribunal please, for
3 nearly three months copies of the affidavits have been
4 served on the prosecution. As a result, in numerous
5 instances objections were made prior to the intro-
6 duction of those affidavits which we were enabled by
7 reason of time to study in advance. Some affidavits
8 were eliminated entirely; in other instances, cross-
9 examination was waived by the prosecution. I am
10 confident there would have been many more cross-
11 examinations conducted if the prosecution had been
12 suddenly confronted with the testimony as it was being
13 read from the affidavit.

14 I can conceive of no element of unfairness
15 to the defense as a result of the experience we have
16 had to the present time. So, from the standpoint of
17 practical efficiency in the conduct of a long trial,
18 we think it is very important that the practice that
19 has been in existence now for three months be continued.

20 I desire also to point out that the procedure
21 at Nuernberg had as its practical effect the same as
22 we have experienced here in the past three months.
23 At Nuernberg the testimony was settled -- the objections
24 to it, settled before it was introduced before the
25 Tribunal. Both the prosecution and the defense were

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1 heard in the settlement of the objections.

2 We are unable to understand now why there
3 should be any unfairness to the defense in the prosecu-
4 tion's knowing, within a reasonable length of time
5 ahead of the introduction of the affidavit, of the
6 contents of it. It can in no sense change the
7 character of the evidence. Probably what the defense has
8 in mind in its objection is that by knowing a short
9 time in advance of the contents of the affidavit, that
10 the prosecution is given an opportunity to see what the
11 prosecution's evidence is that bears on the same matter
12 and to assemble it in an orderly manner and present it
13 to the Tribunal. We submit that any procedure which
14 enables us to submit the matter fairly and promptly and
15 efficiently to the Tribunal could not be a matter of
16 unfairness to the defense.

17 It is submitted, therefore, that the oppor-
18 tunity requested should be given.

19 MR. BLAKENEY: What Mr. Tavenner's plea comes
20 to is this: This procedure would help the prosecution.
21 We do not think that such is the purpose of the Tribunal.
22 Had we had such an order in effect during the presen-
23 tation of the prosecution's case, it would have helped
24 us in many ways. But we never thought to ask the
25 prosecution to divulge their evidence to us twenty-four

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1 hours beforehand. So far as I know, in three instances
2 the prosecution elected -- were not compelled, but
3 elected -- to introduce testimony by affidavit, and
4 in those cases they served the document. Perhaps
5 more than three; three important cases that I remember.

6 As to Nuernberg, two observations occur to
7 me. The first is that this Tribunal has repeatedly
8 stated that it does not and will not slavishly follow
9 the procedure of the Tribunal at Nuernberg. The second
10 is that I am advised -- and I am speaking only on that
11 advice -- that at Nuernberg testimony was not given
12 of compulsion by affidavit, but was taken orally in
13 open court. I am so advised by counsel who has
14 attended proceedings at the Nuernberg Tribunal.

15 While it is true that in the two months, not
16 three, since the Tribunal ordered the reduction of
17 testimony to written form we have served them in
18 advance, I find it very difficult to see how that
19 custom of ours should now have ripened into a rule that
20 we must do so, in contravention of the rule already
21 announced by the Tribunal.

22 MR. TAVENNER: May I be permitted to reply to
23 a new matter brought out by counsel in his argument?

24 THE PRESIDENT: Yes, you may.

25 MR. TAVENNER: I am advised by associate counsel

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1 who participated in the Nuernberg trials and who
2 introduced evidence in the course of the trial, for
3 whatever persuasive value it has, that affidavits were
4 compelled to be used in all except four or five
5 instances.

6 THE PRESIDENT: Well, of course, if they
7 changed their ruling or if we change ours, it would
8 be as a result of our experience.

9 Some Members of the Court desire to have this
10 matter discussed in chambers, and in the circumstances
11 that discussion will take place.

12 We will adjourn for some minutes.

13 (Whereupon, at 1125, a recess was
14 taken until 1150, after which the proceedings
15 were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: The Tribunal has considered
4 the question raised by Major Blakeney as to the ser-
5 vice of defense affidavits in advance on the prose-
6 cution as well as on the Judges. Notwithstanding
7 the ruling of the Tribunal in favor of the defense
8 in that matter, the defense for the last two months
9 or so has seen fit, of their own volition, to serve
10 copies of their affidavits on the prosecution as well
11 as on the Judges. That course has proved conducive
12 to expedition, as to which the parties are referred
13 to Article 12a and b of the Charter. Moreover, it
14 has not been prejudicial to the defense, as the
15 defense, by their voluntary actions, have confirmed.

16 Having regard to the experience of the
17 Tribunal in this matter, a majority of the Tribunal
18 require that the practice of serving the prosecution
19 as well as the Judges be continued. We require the
20 practice be followed in respect of the affidavit
21 of the witness now on the stand. To give the par-
22 ties an opportunity to readjust the position, we
23 will adjourn until half-past one.

24 (Whereupon, at 1153, a recess was
25 taken.)

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AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330, Hon. Ju-Ao Mei, Member from the Republic of China, not sitting.

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

M I T S U I Y A N O, called as a witness on behalf of the defense, resumed the stand and testified through Japanese interpreters as follows:

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: In connection with the matter discussed just before the recess, I should like to state for the record that so far as concerns the defense having voluntarily complied with the new rule, so far as this counsel is concerned I have done so in a few instances as a matter of courtesy in cases where I thought it would not be prejudicial to the defense. We are now, of course, proceeding to comply with the rule fully, and in that connection I should like to ask whether the time for service of affidavits will be the same as with other documents generally.

THE PRESIDENT: I think that is the intention, Major. At least three days, is it?

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MR. BLAKENEY: Twenty-four hours.

THE PRESIDENT: Twenty-four hours I am told.
Yes, that is the position.

MR. BLAKENEY: I am not advised whether the prosecution proposes to object to my proceeding with the witness YANO.

MR. TAVINER: The prosecution does not object to proceeding with this witness.

BY MR. BLAKENEY (Continued):

Q I again ask that the witness be handed defense document No. 1601, and I ask you, Mr. Witness, whether that is your affidavit, signed and sealed by you.

(Whereupon, the document was handed to the witness.)

A Yes.

Q Are the contents thereof true and correct?

A Yes.

MR. BLAKENEY: Defense document 1601, the affidavit of YANO Mitsui, is offered in evidence.

COLONEL SMIRNOV: Your Honor, having read the affidavit of this witness, YANO Mitsui, we object to the admission of the document on the following grounds:

This is not a witness, but an expert testifying on any matters and among them on rules adopted by

1 the Ching dynasty on symbolic religious structures --
2 see paragraph 2 of the affidavit -- and then some
3 rather remote and abstract matters. I believe that
4 in case there was any need to call an expert on these
5 matters it would be necessary choose a competent and
6 impartial person, but a former Japanese intelligence
7 officer connected with the events, whose education
8 was limited by the Foreign Language School and practical
9 experience by conducting some special and absolutely
10 inconsiderable investigations for the Japanese intel-
11 ligence service, cannot be examined for that purpose.

12 In substance, the witness is called only for
13 the purpose of presenting to the Court through him
14 quotations from books and three maps, only two of which,
15 by the way, were served on the prosecution. Moreover,
16 the prosecution has no quotations from these books
17 translated properly up to this time. The books them-
18 selves are not official materials and are, therefore,
19 inadmissible.

20 If the defense wish to introduce these quota-
21 tions, books and maps they should have done it in the
22 usual way but not through the witness who was not the
23 author of these books and maps and has no relation to
24 them whatsoever. And last, in substance the witness
25 testified on one fact known to him with certainty.

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1 It is the fact stated in paragraph 6. This fact of
2 the witness having made some trip around the right
3 bank of the Haluha River has no relevance to the issues
4 of the case.

5 We object to the introduction of the affidavit
6 in its entirety but if the Court does not agree with it
7 we, in any case, ask to delete paragraphs 2, 3, 4, and
8 5 of this affidavit which must be proved by other way --
9 in other ways.

10 THE PRESIDENT: Major Blakeney.

11 MR. BLAKENEY: The rather pointed attack on
12 the witness' qualifications is, perhaps, immaterial
13 because he does not purport to testify as an expert.
14 He makes no pretense, of course, of testifying to rules
15 adopted by the Ching dynasty but quotes from a book
16 which he says he has with him and tenders therewith
17 what is therein stated about rules of the Ching dynasty.

18 The translations of the quotations were, of
19 course, served on the prosecution because they are
20 contained in the body of the affidavit itself. It is
21 true that owing to the over-burdening of the facilities
22 of the photographic section of the Tribunal apparently
23 they have been unable to complete in time the photo-
24 graphic copy of one of the maps, and we shall, of course,
25 have to request leave to reserve the presentation of

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1 that until it is available.

2 The objection that the books are inadmissible
3 as evidence because they are not official publications
4 sounds rather strange in view of the character of
5 evidence which has been introduced in this trial from
6 the beginning and in view of the purpose of the pre-
7 sentation of these books which is to show that standard
8 authoritative works adopt a certain line of thought
9 in connection with the question. The books, of course,
10 would be admissible for whatever probative value they
11 may have in the eyes of the Tribunal if they were
12 tendered in the usual way, which counsel suggest must
13 be adopted. It is, then, exceedingly difficult to
14 see why they should be rendered inadmissible by the
15 attempt to integrate them with testimony on the same
16 subject.

17 THE PRESIDENT: One of the books is by an un-
18 known author. That wouldn't be authoritative, of course.

19 MR. BLAKENEY: That book is stated to be from
20 Chinese sources and, while its probative value will
21 naturally be much lower in the circumstances, it is
22 submitted to the Tribunal that it has some probative
23 value on the question.

24 THE PRESIDENT: By a majority the Court
25 overrules the objection and admits the document on

YANO

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the usual terms.

CLERK OF THE COURT: Defense document 1601
will receive exhibit No. 2650.

(Whereupon, the document above
referred to was marked defense exhibit
No. 2650 and received in evidence.)

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1 MR. BLAKENEY: I now read the affidavit:

2 "I am a former colonel of the Japanese Army,
3 at present residing in Tokyo. Since the middle 1930's
4 my official duties have been largely concerned with
5 questions of investigation of Mangolia. In February-
6 December 1936 I served in a unit guarding the border
7 in the Holombair district; in April 1937 I entered the
8 Tokyo Foreign Language School, Mongolian course, as a
9 government student; from July to November 1937 I
10 served in the second department (intelligence) of the
11 General Staff Office, being concerned with Mongolian
12 affairs; in November 1937-January 1938, September-
13 November 1938, June-July 1939 and June-July 1940, I
14 was specially ordered to undertake investigations in
15 various areas of Inner Mongolia, Sui-yuan and other
16 areas adjacent to Outer Mongolia; and from February
17 1939 to July 1941 I was commander of the investigation
18 detachment of the Japanese Army stationed at Kalgan,
19 Inner Mongolia. Among other questions I have made a
20 special study of boundaries in Manchuria and Mongolia.

21 "2. The territories known as Manchoukuo and
22 the Mongolian People's Republic were originally under
23 the same rule, that of the Ching Dynasty. Among the
24 regulations adopted by the Ching rulers for governing
25 the Mongolian race was the following, to be found in

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1 the book in Japanese entitled Mongolian Topography,
2 written by KASHIWABARA Takahisa and HAMADA Jun-ichi,
3 and published by FUZANBO in 1919, Volume II, para-
4 graph 7, "Manners and Customs", item "Festivals",
5 interpretation of the word "obo", which book is in my
6 possession and is produced herewith: 'In cases where
7 pasturage is carried on and no mountain or river can
8 be found to serve as a boundary an obo shall be es-
9 tablished to mark the boundary. --"

10 I am sorry, the quotation should close at
11 that point:

12 "Between Hsingan-Peisheng province of Man-
13 choukuo and Haluha-miao and Handagaya of the so-called
14 Mongolian People's Republic there is no obo (a sym-
15 bolic religious structure) to mark the boundary, but
16 there is the river Haluha (also known as Khalkin Gol),
17 which therefore must serve as boundary.

18 "3. Among the literature referring to the
19 boundary between the territories now known as Hsingan-
20 Peishang province and the Mongolian People's Republic,
21 is a book entitled History of Nomadic Life in Mongolia,
22 written by the Chinese Chang Mu (1805-1849), Japanese
23 translation by SUSA Kakitsu, which book is in my pos-
24 session and is produced herewith. That the boundary
25 is the Haluha River is clearly shown by the following

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1 passage from Section I, 'Inner Mongolia', Chapter I,
2 paragraph 2, 'Jariate', page 31 of the book: 'According
3 to the Lung Sha Chi Lueh by Fang Shih-chi, 'the area
4 from the southern part of Holombair west to the Haluha
5 River belongs to the land of Barga, and is originally
6 a part of Haluha.' Further, this is said 'The pasture
7 lies to the north of Mount So-yueh-erh-chi and to the
8 bank of the Haluha River' (Section II, 'Outer Mongolia',
9 Chapter IV, paragraph 1, 'Che-Che-han'). These bound-
10 aries are clearly indicated on the map annexed to the
11 book, which is attached hereto and marked Exhibit 'A'.

12 "4. There is a book entitled Holombair,
13 compiled about 1928 by an unknown author in the Chinese
14 language, which book is in my possession and is pro-
15 duced herewith. In Chapter I, the section on 'General
16 Outline of Holombair', paragraph 'Position and Area',
17 page 1, explanation is made in the following terms of
18 the boundary of Holombair (that which draws the line
19 of demarcation between Hsingan-Peisheng province, and
20 the territory called the Mongolian People's Republic:
21 'The Boundary starts from Mont So-yueh-erh-chi in the
22 south end runs in a northeasterly direction until it
23 reaches the Haluha River, which it follows to a point
24 northeast of Lake Bair, running through the middle of
25 the lake, then southwest', etc. According to the map

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1 annexed to the book, which is attached hereto and
2 marked Exhibit 'B', the boundary between Hsingan-
3 Peisheng and the Mongolian People's Republic is shown
4 as the Haluha River.

5 "5. The Japanese General Staff Office had
6 maps of Eastern Asia, compiled by the Surveying Of-
7 fice, of a scale 1:2,500,000. The map attached
8 hereto and marked Exhibit 'C' is one of the maps used
9 by me during my tenure of office in the General Staff
10 Office, from which it appears that the boundary of
11 Hsingan-Peisheng province and the Mongolian People's
12 Republic is the Haluha River.

13 "6. In October 1938 I was ordered to and did
14 make a survey of the boundary of Manchuria and Mongolia,
15 and confirmed the above facts on the spot. I started
16 from Haron Aershan to the Nomonhan border post, going
17 along the Haluha River after passing through Handagaya,
18 and on the first night camped out on the way. On the
19 following day I passed the border post and reached
20 the junction of the Holston Gol (River) with the
21 Haluha, and again bivouacked on the righthand bank of
22 the river. On this occasion I was accompanied by two
23 Mongolians, and noticed that our progress was followed
24 by two Outer Mongolian mounted guards who paralleled
25 our course on the lefthand bank of the river, keeping

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1 more than a thousand meters distant but usually staying
2 within sight, and apparently having the purpose of
3 watching my party. During the two days we saw no other
4 human beings. The two Mongolian guards made no effort
5 to cross the Haluha, nor did they make any effort to
6 molest my party on the righthand bank. The mounted
7 guards wore the uniform of the army of the 'Mongolian
8 People's Republic', and carried rifles. I continued
9 through Nomotschrin to Amkoro without interferences from
10 the Outer Mongolian side, and accordingly reported to
11 my superior officers that I had found the Faluha to
12 be the boundary."

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1 MR. BLAKENFY: I wish to call attention to
2 the fact that in connection with the map, which is
3 marked document 1601-C and not yet served but of
4 which the original has been tendered, there is also a
5 certificate of origin and date bearing the same docu-
6 ment number recently distributed.

7 You may cross-examine.

8 THE PRESIDENT: Are we to get copies of the
9 exhibits mentioned in the affidavit? The annexures
10 should be tendered for identification.

11 MR. BLAKENFY: Yes, I will be glad to tender
12 the originals at this time.

13 BY MR. BLAKENFY (Continued):

14 Q Mr. Witness, will you please identify and
15 hand to the clerk of the court the book "History of
16 Nomadic Life in Mongolia" by Cheng Mu?

17 A I understand.

18 Q Is that it which you have in your hand?

19 A Yes.

20 MR. BLAKENFY: That book and the map attached
21 are tendered for identification.

22 CLERK OF THE COURT: The book entitled
23 "History of Nomadic Life in Mongolia" will receive
24 exhibit No. 2651 for identification only.

25 (Whereupon, the document above

YANO

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1 referred to was marked defense exhibit
2 No. 2651 for identification.)

3 Q Then, Mr. Witness, will you identify and hand
4 to the clerk the book entitled "Holombair," 1928?

5 A I shall do so.

6 MR. BLAKENEY: That book also is tendered for
7 identification.

8 CLERK OF THE COURT: The book entitled "Holombair"
9 will receive exhibit No. 2652 for identification only.

10 (Whereupon, the document above
11 referred to was marked defense exhibit
12 No. 2652 for identification.)

13 MR. BLAKENEY: And, finally, will you identify
14 and hand to the clerk the Japanese General Staff Office
15 map of Eastern Asia referred to in your testimony as
16 exhibit C.

17 The map, together with the attached certificate
18 of origin is tendered for identification.

19 CLERK OF THE COURT: The map referred to as
20 defense document 1601-C will receive exhibit No. 2653
21 for identification only.

22 (Whereupon, the document above
23 referred to was marked defense exhibit
24 No. 2653 for identification.)

25 THE PRESIDENT: Well, the map could be tendered

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1 finally subject to any objection. The books are
2 tendered for identification because it is not meant
3 the whole should be in evidence but only a special
4 part.

5 MR. BLAKENEY: The original map actually
6 should be attached to the original of the affidavit
7 as exhibit C thereto, I believe.

8 THE PRESIDENT: Colonel Smirnov.

9 COLONEL SMIRNOV: Your Honor, maybe we
10 haven't heard. It seems to us that the defense did
11 not tender for identification the book about Nomadic
12 Life of the Mongolians mentioned in paragraph 3 of the
13 affidavit.

14 MR. BLAKENEY: It was identified as exhibit
15 2651.

16 THE PRESIDENT: I have no note of the tender
17 of the exhibit mentioned in paragraph 2. The exhibits
18 mentioned in paragraphs 3, 4 and 5 were tendered for
19 identification.

20 MR. BLAKENEY: I did not tender the book
21 referred to in paragraph 2 because there is no question
22 of the map, but I shall be glad to make tender, also,
23 of that book which is entitled "Mongolian Topograph,"
24 and for that purpose I ask the witness to identify it
25 and hand it to the clerk.

YANO

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1 THE PRESIDENT: That will be for identification
2 only?

3 MR. BLAKENY: Yes.

4 THE PRESIDENT: But now an excerpt from that
5 has been admitted into evidence. We can receive it as
6 part of the affidavit. However there is no use having
7 it twice.

8 MR. BLAKENY: My feeling was it would save
9 time, paper, and labor by so incorporating it in the
10 affidavit.

11 CLERK OF THE COURT: The book entitled
12 "Mongolian Topography" will receive exhibit No. 2654
13 for identification only.

14 (Whereupon, the document above
15 referred to was marked defense exhibit
16 No. 2654 for identification only.)
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1 MR. BLAKENEY: In connection with the map, which
2 is exhibit C of the affidavit, I should like also to
3 read into the record the certificate attached thereto.
4 This is the certificate of the Chief of Geographical
5 Survey of the Ministry of Home Affairs as follows--

6 THE MONITOR: Mr. Blakeney, we don't have the
7 document delivered to us yet.

8 MR. BLAKENEY: It is very short. You can trans-
9 late as I read it.

10 "I hereby certify that the following was pro-
11 duced by the Imperial Survey Department: 1:2,500,000
12 East Asia Continental Map. Set of four sheets printed
13 in four colors. Prints prepared in 1927 and revised
14 and reprinted in 1937."

15 You may cross-examine.

16 THE PRESIDENT: Major Blakeney, we are now about
17 to have cross-examination I assume based on those maps.
18 Without those maps we will not be able to follow any
19 such cross-examination intelligently.

20 MR. BLAKENEY: I don't understand that the
21 Tribunal is missing all of the maps; is it?

22 THE PRESIDENT: We have no maps at all; none
23 of the maps referred to in this affidavit at all events.

24 MR. BLAKENEY: I regret very much that there
25 ~~seems to have been a contretemps of some sort, because~~

1 I have all except the last map in English and I have
2 them all in Japanese, or Chinese, as the case may be.

3 THE PRESIDENT: You are right. They have not
4 been distributed.

5 MR. BLAKENEY: Since in any event one is missing,
6 if the Tribunal desires I will be quite glad to have
7 cross-examination postponed if counsel are willing.

8 COLONEL SMIRNOV: Your Honor, I respectfully
9 beg you to give me directions whether to start cross-
10 examination now or to wait until the missing copies
11 of the maps shall be served.

12 THE PRESIDENT: Two out of the three maps men-
13 tioned have been served on us. Two out of the three
14 maps distributed are parts of books. Is there a third
15 one?

16 COLONEL SMIRNOV: May I start cross-examining,
17 your Honor?

18 THE PRESIDENT: No. We want all three maps,
19 or copies thereof.

20 MR. BLAKENEY: Then may I suggest that the
21 witness be stood down at this time until such time as
22 we can secure the maps from the photographic section?

23 THE PRESIDENT: The question of boundaries is
24 of vital importance, and we must know what the witness
25 is talking about from looking at maps.

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2 them all in Japanese, or Chinese, as the case may be.

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21 witness be stood down at this time until such time as
22 we can secure the maps from the photographic section?

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24 of vital importance, and we must know what the witness
25 is talking about from looking at maps.

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1 On what maps do you propose to cross-examine,
2 Colonel?

3 We have before us the copies of the maps re-
4 ferred to in the books that have been tendered. We
5 have not a copy of the map from the Japanese General
6 Staff office.

7 COLONEL SMIRNOV: Your Honor, I can't answer
8 your question until I myself see the third map. I
9 haven't seen it as yet.

10 THE PRESIDENT: The witness is stood down for
11 cross-examination later.

12 (Whereupon, the witness was excused.)

13 THE PRESIDENT: Major Blakeney.

14 MR. BLAKENEY: My next document, which was
15 to have been defense document No. 1320, is in the same
16 condition, that is to say the maps of which it consists
17 have been in the course of photographic reproduction
18 for some weeks and have not yet arrived. It consists
19 of maps only, and while, of course, I have nothing to
20 tender at this moment, I mention it here for the sake
21 of continuity of the evidence when it is introduced
22 later.
23

24 I now come, Language Section, to exhibit 745.
25 That the Japanese Government did at various times take
the initiative in proposing the adoption of measures

1 for the prevention of possible border incidents is appar-
2 ent from the prosecution's own evidence, exhibit 745, an
3 "oral statement" delivered by Foreign Minister UCHIDA
4 to Soviet Ambassador Troyanovsky on the 13th of December
5 1932, in paragraph 3 of which the following suggestion
6 is contained:

7 "For the time being it will be of avail if
8 both governments will confer together on peaceful methods
9 of preventing and solving locally all sorts of diffi-
10 culties that may accidentally arise due to the fact
11 that the Japanese and Soviet troops are stationed so
12 close to one another. The creation of a Japano-
13 Soviet-Manchurian committee to prevent border incidents
14 may become one of such means."

15 THE PRESIDENT: Mr. Tavenner.

16 MR. TAVENNER: I would like to call to the
17 Tribunal's attention that that same paragraph was read
18 by the defense two days ago.

19 MR. BLAKENEY: If that is correct I apologize
20 for trespassing on the Tribunal's time. But I point
21 out that does not affect the validity of the point.

22 MR. TAVENNER: May I be heard again on this
23 matter, your Honor?
24

25 There has been a tendency in the later phases
of the case to argue the case as the documents are

being presented, and if this matter is repeated it
1 can only be for the sake of argument.

2 I called this general type of objection to the
3 Tribunal's attention one or two days ago, and I would
4 like to do it again because it is quite apparent that
5 the defense instead of referring to documents is
6 arguing documents.

7 THE PRESIDENT: The prosecution also offended
8 in this respect. But two wrongs don't make a right.
9 Do avoid that if you can.

10 MR. BLAKENEY: Since Mr. Tavenner has gone out
11 of his way to state that I have reread a document to
12 the Tribunal out of improper motives, I want to assure
13 the Tribunal that any instance when I note a document
14 on my list has been read, I so state and so make reference
15 to it.

16 THE PRESIDENT: Don't waste any more time about
17 it.

18 MR. BLAKENEY: Such was my feeling.

19 Prosecution exhibit 704, a strictly secret
20 decision of the Japanese Premier and Foreign, War and
21 Navy Ministers, on 7 August 1936, of foreign policy
22 for the Empire, shows that four years later demarcation
23 of these borders was still Japanese policy. I read
24 paragraphs 1-A and 1-B from page 3 of the document,
25

1 assuring the Tribunal that so far as I am aware they
2 have not been read into the record.

3 "a. Establishments of two committees, one
4 for demarcation of the border line in the region from
5 the Lake Khanaka to the River Tumen and the other for
6 solution of troubles along the border line, as well as
7 the establishment of similar organs dealing with the
8 frontier of other regions between Manchukuo and the
9 Soviet Union and Manchukuo and Mongolia shall be
10 designed.

11 "b. At an appropriate opportunity the estab-
12 lishment of a non-armed zone shall be proposed."

13 I shall now read from exhibit 2370, a speech
14 of Foreign Minister ARITA to the Diet on the 21st of
15 January 1937. In reporting on developments in the
16 field of foreign relations he states that the Japanese
17 Government has in that year renewed its proposal to the
18 U.S.S.R. for border demarcation. I read the last para-
19 graph on page 6, not, so far as I am aware, heretofore
20 read in evidence.

21
22 "The establishment of Commissions for the
23 Manchoukuo-Soviet border demarcation and settlement
24 of disputes was proposed by our Government in the belief
25 that such bodies would contribute substantially toward
the prevention of disputes between Japan, Manchoukuo

1 and the Soviet Union, and the harmonization of the
2 tripartite relations. I may say that an agreement
3 of views has been reached on all the basis questions
4 involved, excepting one or two points. And our Govern-
5 ment hope to see this question settled as soon as
6 possible."

7 My next document is exhibit 2497, being a
8 speech of Foreign Minister HIROTA to the Diet on the
9 27th of July 1937, in which among other things the
10 Foreign Minister again publicly urges the government
11 of the U.S.S.R. to cooperate for the avoidance of
12 border disputes. The document has been read. I there-
13 fore call attention specifically to page 4, commencing
14 with line 12 and going to the end of the page.

15 In my next document, defense document No. 240,
16 we find this same theme being developed after the
17 Nomonhan incident, a conflict of the type which Japan
18 had striven to avert.

19 The document is offered in evidence.

20 Well, the Clerk says he hasn't it so we will
21 have to pass it.

22 I now call as a witness to testify concerning
23 the beginning of the Nomonhan incident, HATTORI Takushiro,
24 whose testimony is embodied in defense document 1604.
25

HATTORI

DIRECT

1 TAKUSHIRO HATTORI, called as a witness ,
2 on behalf of the defense, being first duly
3 sworn, testified through Japanese interpreters
4 as follows:

5 MR. TAVENNER: If the Tribunal please ---

6 THE PRESIDENT: Mr. Tavenner.

7 MR. TAVENNER: This is one of the affidavits
8 which was served during the noon hour today.
9 Associate counsel who would conduct the examination,
10 do not desire to waive the service in this instance
11 because they have not actually seen the affidavit.

12 THE PRESIDENT: Well the rule must be
13 adhered to.

14 MR. BLAKENEY: I assume that they are re-
15 questing an adjournment then. The service was made in
16 accordance with the rule as it then stood.

17 THE PRESIDENT: I simply say the rule must
18 be observed. I do not know when it was served.
19 Mr. Tavenner said it was served during the luncheon
20 adjournment.

21 MR. BLAKENEY: My point was, if your Honor
22 please, that the document was served immediately
23 upon the enunciation of the new rule requiring ad-
24 vance service. I am prepared to proceed in accordance
25 with my order of proof made up under the rule as it

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1 then stood. If the prosecution are not ready to proceed
2 I don't believe I should be forced to make a new order
3 of proof and proceed in some other way.

4 THE PRESIDENT: Subject to any agreement between
5 the parties, we will take this up after lunch tomorrow
6 afternoon.

7 MR. TAVENNER: If the Tribunal please, associate
8 counsel have now had an opportunity to glance over it and
9 waive the requirement for twenty-four hour service.

DIRECT EXAMINATION

10
11 BY MR. BLAKENEY:

12 Q Please state your name and residence.

13 A My address is 42 Hommuracho, Shinjuku-ku,
14 Tokyo, and my name HATTORI Takushiro.

15 MR. BLAKENEY: I ask that the witness be handed
16 defense document 1604.

17 (Whereupon, a document was handed to the
18 witness.)

19 Q I ask you, Mr. Witness, whether that is your
20 affidavit bearing your signature and seal?

21 A This is my affidavit and my seal is affixed thereto.

22 Q Are the contents thereof true and correct?

23 A Yes.

24 THE PRESIDENT: He said yes.

25 MR. BLAKENEY: I was waiting a moment because

1 they are having some difficulty in finding -- Mr.
2 Tavenner has an incomplete copy.

3 MR. TAVENNER: If the Tribunal please, the
4 affidavit presented to the witness is printed on
5 both sides of the sheet. The only copy we have is
6 printed only on the one side. At this moment we
7 have been presented with corrected affidavits, or
8 rather an affidavit which is correctly printed. And
9 if the Tribunal will bear with us for just one moment
10 we would like to review our previous decision.

11 THE PRESIDENT: Your previous agreement.
12 Mr. Tavenner.

13 MR. TAVENNER: If the Tribunal please, we
14 will not change our former decision to waive the
15 service.

16 MR. BLAKENEY: The affidavit, defense doc-
17 ument 1604 is offered in evidence.

18 THE PRESIDENT: Mr. Tavenner.

19 MR. TAVENNER: If the Tribunal please, we
20 object to the introduction in evidence to that part
21 of paragraph 2 which refers to a telegram which is
22 not produced and the absence of which is not accounted
23 for. Objection is also made to the last sentence in
24 the last paragraph in that it refers to a different
25 telegram, the absence of which has not been accounted

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DIRECT

1 for. Objection is also made to the last sentence
2 in the last paragraph in that it refers to a differ-
3 ent telegram, the absence of which has not been
4 accounted for and which has not been produced.

5 MR. BLAKENEY: If the Tribunal please, it is
6 submitted that this objection represents the
7 reductio ad absurdum of this rule which in its
8 origin is a rule of hearsay which we have been apply-
9 ing in connection with documents. The reference to
10 the telegram in section 2, paragraph 1, in no way
11 purports to state the contents of the telegram as
12 a fact. It in no way purports to state the contents
13 of the message as being true.

14 THE PRESIDENT: You are not offering the
15 telegram as proof of its contents?

16 MR. BLAKENEY: Not in any way whatever. A
17 perusal of the passage shows that the telegram is
18 mentioned as having been the cause or occasion for
19 certain action, the receipt of the telegram.

20 THE PRESIDENT: Does that apply to the
21 second telegram?

22 MR. BLAKENEY: No second telegram is mentioned.
23 The statement of the affidavit is that someone took
24 the measure of telegraphing. We can strike out, if
25 we like, the contents of what he telegraphed. The

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1 important point is that the action was taken.

2 THE PRESIDENT: No, the rule applies if
3 you are relying on the contents of that second
4 telegram in the last paragraph of the affidavit.
5 But apparently you are not so we will disregard
6 both telegrams as to their contents. The objection
7 is upheld in part and rejected in part and the doc-
8 ument admitted with those excisions on the usual
9 terms.

10 I think the objection is wholly successful
11 so the objection is upheld.

12 CLERK OF THE COURT: Defense document
13 No. 1604 will receive exhibit No. 26⁵⁵.

14 ("Whereupon, the document above
15 referred to was marked defense exhibit
16 No. 26⁵⁵ and received in evidence.)

17 MR. BLAKENEY: I read the affidavit omitting
18 the formal parts. (Reading):

19 "I am a former colonel, and my present
20 residence is 42 Hommuracho Shinjuku-ku, Tokyo.

21 "In 1939 at the time of the Nomonhan incident,
22 I was staff officer of the Kwantung Army in charge of
23 operations. The following are the circumstances in
24 which the incident began.

25 "1. The Kwantung Army had in its plan of

HATTORI

DIRECT

1 operations vis-a-vis the U S S R in 1939 no offen-
2 sive plans toward the western border--i.e. toward
3 Hailar, Haron Aershan, or the western Outer Mongol-
4 ian area. At that time in the event of a war's
5 breaking out between Japan and the U S S R, we
6 estimated that the main field of battle in Manchuria
7 would be toward the eastern border, so the Kwantung
8 Army was to plan to hold out in the west with the
9 minimum strength. Directly after the commencement
10 of a war, it could naturally be expected that a
11 powerful Soviet force would thrust against the Hailar
12 area. Against this our forces were only the 23d
13 Division, then stationed at Hailar, and the Hailar
14 Border Defense Garrison, so that it was to be expect-
15 ed that warfare in this area would within a short
16 period develop by our being completely surrounded by
17 the powerful Soviet Army. So we, on our part, built
18 circular fortifications on the heights around Hailar,
19 and prepared to fight to the last, completely on the
20 defensive, thus absorbing the opponent's manpowers
21 and accomplishing our object of holding out. The
22 Haron Aershan area, that is on the southern side of
23 the Hsingan mountains, is also a point of strategic
24 interest, and it was hoped to station in this area a
25 unit capable of fighting, but we had to refrain from

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1 doing so on account of the over-all manpower question.
2 Eventually, in 1939, we permanently stationed the
3 Aershen Garrison, and we planned in wartime to hold
4 out in this area with the strength of only about a
5 single division. In the study of operations at that
6 time, as related above, whether we would be able to
7 hold out on the front near Hailar to Haron Aershun--
8 in other words to hold out against a far more power-
9 ful Soviet attack--was a point which most concerned
10 an officer in charge of operations; but to allot
11 sufficient manpower to this district would have meant
12 the sacrificing of manpower in the main field of
13 battle, operations in the interior, so from considera-
14 tion of the general situation we limited it to the
15 smallest possible numbers. (we were perhaps risking
16 even less than the minimum) which means that instruc-
17 tions for operations were of entirely defensive type,
18 within the boundary of Manchoukuo.

19 "2. It was late in the afternoon on the
20 13th that the Kwantung Army learned that an incident
21 had broken out near Bomonhan on the morning of 12 May
22 1939. On that afternoon I, together with a few other
23 staff officers, was at the official residence of the
24 Commander of the Kwantung Army, chatting after a
25 meeting concerning inspection of training of

HATTORI

DIRECT

1 subordinate units of the Army or some other subject,
2 when a telegram was forwarded from the Headquarters
3 of the Army by the one in charge."

4 MR. BLAKENEY: Shall I omit the reading
5 of the telegram?

6 THE PRESIDENT: No you can go on with the
7 next sentence.

8 MR. BLAKENEY: (Reading)

9 "This telegram was a confidential telegram from the
10 commander of the 23d Division (Hailer Defense
11 Commander) to the Commander of the Kwantung Army.
12 The contents were that on the morning of the 12th
13 a unit belonging to the Outer Mongolian Army, of not
14 less than 700 men, crossed the Haluha River, thus
15 crossing the border, towards the south of the Nomonhan
16 district, attacked the Manchurian guard unit which
17 was on duty for the defense of the border of that
18 area."

19 THE PRESIDENT: That is where you stop.

20 MR. BLAKENEY: Next paragraph.

21 THE PRESIDENT: No you still have a sentence
22 in that paragraph.

23 MR. BLAKENEY: Well that is part of the
24 contents of the telegram, of course.

25 THE PRESIDENT: I do not think it is. It

HATTORI

DIRECT

1 does not appear to be.

2 MR. BLAKENEY: Very well. (Reading)

3 "The division commander dispatched to the spot a
4 search-regiment under the command of the division's
5 search-regiment commander, as well as two infantry
6 companies, he having decided to drive out the invad-
7 ing Outer Mongolian Army.

8 "It can be seen that it took about 36 hours
9 for information to reach headquarters of the Army in
10 Hsinking, from the time that the incident broke out
11 near Nomonhan, which is accounted for by the fact that
12 the Japanese Army had no installation near that
13 district, and communication to Hailar, about 200 kil-
14 ometers away, was performed by the inefficient commun-
15 ication system of the Manchurian Army. That is why
16 it took such a long time.

17 "Up to that time the Manchoukuoan border,
18 especially the eastern border, had been sustaining
19 unlawful invasions of the Soviet Army quite often
20 and border disputes were continuous, causing us much
21 worry. The Kwantung Army, whose duty it was to main-
22 tain the integrity of Manchuria, could not ignore these
23 unlawful actions, but difficulties always followed
24 their settlement as a result of the scheming of the
25 Soviet Army.

HATTORI

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1 "On receipt of the aforesaid telegram our
2 reaction was, "Has it happened again?" and we felt
3 it unpleasant. Nomonhan being a very out-of-the-way
4 place, and a place to which we attached no importance
5 not one of the staff officers knew the location of
6 Nomonhan. So after making a report of the matter to
7 the Commander of the Army, we went to headquarters,
8 and although we ordered the intelligence section
9 of the staff department to bring a map of the Hailar
10 district, as well as ordering investigations to be
11 made by the chief of topography, it was not easy to
12 locate the place. At last after several hours we
13 found a place called "Nomonhan Buru", and deciding
14 that this must be the place, began to study counter-
15 measures.

16 "In such circumstances no action on the part
17 of the Commander of the Army could be taken that day,
18 and it was on the following day, the 14th, that after
19 consultations between the commander and his staff
20 necessary measures were taken. Such measures were
21 to telegraph the commander of the 23d Division to
22 the effect that the Commander of the Kwantung Army
23 agreed with him in his decision, but that in the
24 settlement of the incident we could not permit the
25 crossing of the border from our side, and to take the

HATTORI

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1 most extreme caution not to let the matter become
2 enlarged."

3 THE PRESIDENT: We will recess now for
4 fifteen minutes.

5 (Whereupon, at 1445, a recess was taken
6 until 1500, after which the proceedings were
7 resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Major Blakeney.

4 MR. BLAKENEY: I wish to put one or two
5 additional questions to the witness.

6 BY MR. BLAKENEY (Continued):

7 Q Mr. Witness, at the meeting which you have
8 testified to on the 14th of May between the Commander
9 of the Kwantung Army and his staff, was a decision
10 reached as to what action should be taken?

11 A Yes, a decision was made.

12 Q What was that decision?

13 A It was decided in accordance with his natural
14 authority, the commander of the Hailar Defense Force --
15 correction: One of the decisions made was to dispatch
16 one unit to Nomonhan, agreeing to the natural authority
17 vested in the commander of the Hailar Defense Force.

18 Correction: One of the decisions was that the
19 Commander-in-Chief of the Kwantung Army agreed to the
20 sending of a unit to Nomonhan in accordance with the
21 natural -- decided upon by the commander of the Hailar
22 Defense Force in accordance with the authority vested
23 in him. Another point in the decision, that in dis-
24 patching this unit, the Japanese were absolutely not
25 to cross the border.

HATTORI

DIRECT

1 Another decision was to the effect that no
2 activities should be undertaken such as would expand
3 the incident; and also to send a telegram containing
4 the three-point decision to the commander of the Hailar
5 Defense Force.

6 MR. BLAKENEY: You may cross-examine.

7 MR. TAVENNER: The prosecution does not desire
8 to cross-examine.

9 MR. BLAKENEY: I request that the witness be
10 released on the usual terms.

11 THE PRESIDENT: He is released accordingly.

12 (Whereupon, the witness was excused.)

13 MR. BLAKENEY: The testimony of Lieutenant
14 General HASHIMOTO, Gun, exhibits 2621 and 2622, is
15 here referred to for convenience in its bearing on the
16 point here under consideration.

17 I now call as a witness to testify concerning
18 some aspects of the Nomonhan Incident, OGISU, Rippei,
19 whose affidavit is defense document No. 1376.

20 THE PRESIDENT: Mr. Tavenner.

21 MR. TAVENNER: If the Tribunal please, this
22 document, 1376, and also defense document 1581, slightly
23 below it, are affidavits which were served during the
24 noon recess and the prosecution does not waive the
25 ruling of the Tribunal with regard to it.

1 MR. BLAKENEY: Again, I say I am at a loss
2 to know just what the prosecution does propose. I
3 do not believe that I should be compelled to present
4 other parts of the case which have no logical connection
5 with those already presented, and I think if the prose-
6 cution is not ready to cross-examine they should request
7 time to prepare for that purpose.

8 THE PRESIDENT: Well, if the prosecution
9 insist, we won't take this evidence until tomorrow
10 afternoon.

11 MR. BLAKENEY: Well, I am not prepared to
12 proceed because I would have to rewrite my commentary,
13 I will have to rearrange my documents, try to bring
14 them into some other order.

15 THE PRESIDENT: We don't want to waste fifty
16 minutes by adjourning until tomorrow. Or would it be
17 until tomorrow afternoon?

18 MR. TAVENNER: If the Tribunal please, we
19 are willing to make every reasonable concession in view
20 of the manner in which -- the sudden manner in which
21 this matter came up today. I think by tomorrow morning
22 we would be perfectly willing to waive any residue
23 of the twenty-four hour notice that is required.

24 THE PRESIDENT: If we adjourn now we lose
25 forty-five precious minutes.

1 MR. TAVENNER: There are eighty-three
2 documents on this order list, only a half dozen or so
3 of which have been called. But if defense counsel
4 feels that it will be a great interruption to call
5 other documents, there would be no objection on our part
6 to the reading of the affidavits provided that we have
7 until tomorrow morning to do the cross-examination.

8 THE PRESIDENT: We appreciate your sensible
9 attitude, Mr. Tavenner.

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OGISU

DIRECT

1 R I P P E I O G I S U, called as a witness on
2 behalf of the defense, being first duly sworn,
3 testified through Japanese interpreters as
4 follows:

DIRECT EXAMINATION

BY MR. BLAKENEY:

7 Q State your name and residence, please,
8 Mr. Witness.

9 A My name, OGISU, Rippei. My address, 1777
10 Uehara-cho, Shibuya-ku, Tokyo.

11 Q I ask that the witness be handed defense
12 document No. 1376, and I ask the witness to examine
13 this document and state to the Tribunal whether it is
14 his affidavit signed and sealed by him?

15 A This is my affidavit.

16 Q Are the contents thereof true and correct?

17 A There are no errors.

18 MR. BLAKENEY: The affidavit, defense document
19 No. 1376, is offered in evidence.
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1 THE PRESIDENT: Mr. Comyns Carr.

2 MR. COMYNS CARR: We object to paragraph 2.

3 In paragraph 1, the witness states that he arrived
4 in the district on the 2nd of August, 1939, and in
5 paragraph 3, he states that he did not arrive at
6 the actual scene until August 12, but in paragraph 2
7 he purports to narrate a history of matters which
8 had been occurring before either of those dates.
9 We realize that the Tribunal has relaxed the hear-
10 say rule, but in our submission that means no more
11 than that a witness who states the source of his
12 information is entitled to give that information as
13 evidence. We can then test it both on the question,
14 why the informant is not available and as to the
15 credibility of the informant as well as the witness.
16 But, in our submission that relaxation does not en-
17 title a witness to convert himself into a narrator
18 of an event which he admittedly knows nothing about.
19 We have noticed an increasing tendency in this direc-
20 tion among recent affidavits, and we ask for a ruling
21 of the Tribunal so that it may be stopped.

22
23 THE PRESIDENT: Well, we have arrived at
24 no particular ruling about hearsay except we do not
25 exclude it, but I know what my colleagues think about
that; they do expect to be told the source of the

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1 information. But we do expect the hearsay to be
2 something which was told to the particular depo-
3 nent in the course of his duty, and we expect the
4 informant to be a person who is entitled to speak.
5 I cannot put the position any better than has been
6 put for me by one of my colleagues as this debate
7 has proceeded, namely, as commander in chief of the
8 army -- he is a lieutenant general -- he would get
9 frequent reports and thus should know, as far as the
10 reports went, whether they were truthful and what
11 the position was. There may be other safeguards;
12 for the moment, I cannot think of any. You might
13 get out of him, as you examine him in chief, Major
14 Blakeney, just what was the source of his information,
15 and what duty he had to acquire it.

16 MR. COMYNS CARR: Your Honor, in this case
17 my objection is to matters which occurred before he
18 became commander.

19 THE PRESIDENT: Well, of course, so far as
20 he testifies as to the opinion of any particular
21 country, we will want to know on what that opinion
22 was based also. He testifies as to the settled
23 opinion of Manchukuo, which is a government. It
24 certainly will not be of much help to us unless we
25 know upon what grounds the Manchukuoan opinion was

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1 based. The most biased authority of all as to the
2 boundaries concerned would be one of the two govern-
3 ments concerned.

4 MR. BLAKENEY: That is what I was going to
5 suggest, that all of these matters can very effect-
6 ively and properly be disposed of on cross-examin-
7 ation.

8 THE PRESIDENT: My colleagues direct my
9 attention to the last three lines of paragraph 2:

10 "The armed clash occurred as the Outer
11 Mongolian soldiers made an assault against the
12 aforesaid Mongolian frontier guards on the Manchurian
13 side on May 12 of the same year."

14 In that, my colleagues point out, the
15 witness attempts to pre-judge the issue, although
16 he was not there.

17 MR. BLAKENEY: Yes. Recognizing that that
18 is the type of evidence which became very familiar
19 to us during the prosecution's Russian phase, I did
20 propose to ask him additional questions on direct
21 examination to attempt to get facts in place of con-
22 clusions.

23 THE PRESIDENT: Well, proceed to read the
24 affidavit.

25 MR. BLAKENEY: It has not yet been given an

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1 exhibit number, I believe.

2 CLERK OF THE COURT: Defense document 1376
3 will receive exhibit No. 2656.

4 (Whereupon, the document above re-
5 ferred to was marked defense exhibit No.
6 2656 and received in evidence.)

7 MR. BLAKENEY: The affidavit is as follows,
8 omitting the formal parts:

9 "I am a former lieutenant-general in the
10 Japanese army. During the interval between August
11 to October of 1939 I participated in the Nomanhan
12 Affair as the commander of the Six Army which was
13 under the command of the Kwantung Army.

14 "1. It was August 2, 1939 that I as the
15 commander of the Six Army arrived at Hailar. I
16 encountered then an affair which was later on known
17 as the 'Nomanhan Affair' already broken out. The
18 Six Army had under its command the 23rd Division,
19 part of the 7th Division and a frontier garrison.

20 "2. It was a settled opinion on the part
21 of Manchukuo since its national inception that the
22 frontier line between Manchukuo and Outer Mongolia
23 was a line along the River Halha. The frontier
24 observation post of Manchukuo was located at Noman-
25 chan, a little over 10 kilometers back off the Halha.

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1 It is a common practice to set a frontier guard post
2 at a spot a little removed from the border line of
3 any two countries. Moreover, the east bank of the
4 River Halha is low land and was therefore, unfit for
5 the site of a frontier guard post. The aforesaid
6 guard post at Nomanhan was composed of Mongolian
7 (Inner) soldiers who were to keep watch at the
8 frontier of the Manchurian side. The Outer Mongol-
9 ian side had its pickets disposed along the left
10 bank of the River Halha. The armed clash occurred
11 as the Outer Mongolian soldiers made an assault
12 against the aforesaid Mongolian frontier guards on
13 the Manchurian side on May 12 of the same year.
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1 "3. I arrived at Nomanhan on August 12,
2 1939, and, on the following 13th, reached the spot
3 where the fighting was taking place. I took a general
4 view of the actual situation with our side facing
5 the opponents across the River Halha and right away
6 ordered the commander of the 23rd Division to quickly
7 concentrate forces for winter-encampment. Then I
8 returned to Hailar. At Hailar I was keeping myself
9 busy in making an inspection visit of the guard when
10 on the 20th of the same month an aerial message
11 was brought in, which said that united forces of
12 Outer Mongolians and Soviets with tank units as their
13 major strength had made inroad into the Manchurian
14 territory along seven separate roads. I despatched
15 the chief of the staff to the battle-ground the
16 next day (21st) and I myself reached there on the
17 23rd and endeavored to check their advances. In
18 September 1" -- I suppose -- "we found them building
19 defence positions along the line from the River
20 Harbin-Goal to Nomanhan. On September 6 we received
21 an Imperial Command from Headquarters ordering the
22 6th Army to make an agreement for the cessation of
23 hostilities holding the positions on both sides as
24 they were. Consequently, I sent the chief of staff
25 as my representative to the Soviet position, and the

cessation of hostilities was concluded.

1 "4. My duty at that time was to guard the
2 frontier line. No order had we received from either
3 the Kwantung Army or the Headquarters to advance
4 forward by crossing the frontier line. The duty
5 of the 23rd Division prior to my installation in
6 the post of commander of the 6th Army was also to
7 guard the frontier line."

8 BY MR. BLAKENEY (Continued):

9 Q Now, Mr Witness, I wish to ask you a few
10 additional questions. When you arrived at Hailar
11 on the 2nd of August, 1939 to assume your post
12 as Commander of the 6th Army, were you given information
13 by the staff officers of your army concerning the
14 situation?

15 A I arrived at Hailar on August 12th.

16 MR. BLAKENEY: I am told, if the Tribunal
17 please, that that appears as the 12th in the Japanese
18 version of the affidavit and is therefore a misprint
19 here.

20 THE PRESIDENT: Is that agreed? If it is
21 not, we will refer it to the Language Section.

22 Q Then, correcting my question in that way,
23 Mr. Witness, when you arrived at Hailar on the 12th
24 of August as Commander of the 6th Army were you

1 informed by the staff officers of your army of the
2 situation then existing?

3 A Yes.

4 Q Were they reporting to you in their official
5 capacity as your staff officers and to you in your
6 official capacity as Commander of the 6th Army?

7 A Yes.

8 Q And did they, in making this report,
9 officially state to you what was known of the origin
10 and cause of the incident prior to your arrival?

11 A Not only my staff officers, but I heard
12 directly from the Commander of the 23rd Division
13 in the field of battle on the following day, the
14 13th, as to the origin and the cause of the incident.

15 Q And was it on the basis of those official
16 reports so made to you that you made your decisions
17 and issued your orders for the further management
18 of the incident?

19 A That is so.

20 Q Is it on the basis of those official reports
21 and other reports received by you from time to time
22 and of any official files which appertain to you as
23 Commander of the 6th Army that you make the state-
24 ments contained in your affidavit concerning the
25 origin and outbreak of the Nomanhan Incident?

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1 A Yes.

2 THE PRESIDENT: Mr. Comyns Carr.

3 MR. COMYNS CARR: Your Honor, I was hoping
4 to get an opportunity to object before the witness
5 was allowed to answer. In every question put my
6 friend has been extremely leading, but the last one,
7 in my submission, is beyond all limits.

8 MR. BLAKENEY: I detect in it none of the
9 elements of an improper, leading question.

10 THE PRESIDENT: That is a question that
11 suggests the answer and is right on the borderline,
12 Major. You might have asked him on what he based
13 what he said in his affidavit.

14 MR. BLAKENEY: Since he has answered, I
15 will pass on to another matter.

16 BY MR. BLAKENEY (Continued):

17 Q Did you or did you not credit or believe
18 the report so made to you by your staff officers
19 and others?

20 A Yes, I believed them.

21 Q Who was the Commander of the 23rd Division
22 at that time?

23 A Lieutenant General KAMATSUBARA.

24 Q Is he alive or dead?

25 A He died after returning to Japan as a result

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1 of an illness.

2 Q Do you know who was the Chief of Staff
3 of the 23rd Division?

4 A I do not recall.

5 Q Can tell us who was Commander of the part
6 of the 7th Division which was in the area at that
7 time?

8 A I have forgotten.

9 Q Did yourself at any time see what was
10 reported to you by your staff or subordinate officers
11 to have been the original Manchukuoan guard post
12 at Nomanhan?

13 A On the 13th I arrived on the spot and heard
14 the general report of the situation from the Commander
15 of the 23rd Division and other officers attached to
16 that division.

17 Q At that time were the original Manchukuoan
18 border-guard posts pointed out to you?

19 A I have seen the areas through which I passed
20 in the vicinity of Nomanhan.

21 Q I am afraid I don't quite understand. Do
22 you mean that you saw them at that time?

23 A Yes, they were pointed out and I think
24 two or three such points were indicated to me.
25

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1 Q You have testified concerning the duties
2 of the 23rd Division prior to your arrival on the
3 scene. How do you come into possession of that
4 information?

5 A I have stated those aspects of the report
6 which were made to me at the time by the Commander
7 of the 23rd Division.

8 Q One last question: Who was your Chief of
9 Staff in the 6th Army?

10 A Major-General FUGIMOTO.

11 Q Is he still alive?

12 A He was in the southern regions somewhere,
13 but I don't know of him since his going into that
14 area.

15
16 MR. BLAKENEY: That concludes the direct
17 examination. Will his cross-examination be reserved?

18 I understand that cross-examination will
19 proceed; but may I suggest, in accordance with the
20 requirements which have been enforced in the past,
21 that counsel who objected originally to the affi-
22 davits conduct the cross-examination?

23 THE PRESIDENT: Major Moore.

24 LANGUAGE ARBITER (Major Moore): Mr. Presi-
25 dent, in the present exhibit, paragraph 1, line 1,
the date should be August 12.

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1 THE PRESIDENT: Thank you, Major.

2 COLONEL SMIRNOV: Your Honor, we would
3 like to start cross-examination now in order to save
4 time.

5 THE PRESIDENT: Proceed, Colonel Smirnov.

6 CROSS-EXAMINATION

7 BY COLONEL SMIRNOV:

8 Q Mr. Witness, at what date precisely did you
9 arrive at the disposition of the 6th Army -- the
10 place of disposition of the 6th Army?

11 A It was on the 12th that I arrived. The
12 concentration of the 6th Army and my arrival at
13 Hailar -- my post at Hailar took place on the 12th --
14 the 13th; but at that time the 6th Army had not com-
15 pleted its concentration. At that time the 23rd
16 Division and the 27th Division, which constituted
17 the first line forces of the 6th Army, were in the
18 Namenhan area.

19 THE MONITOR: "27th Division" should be
20 corrected to read "a part of the 7th Division."

21 A (Continuing) And it was on the 13th that
22 I arrived at the Division Headquarters on the front
23 lines.

24 Q Are you sure you arrived at the place of
25 disposition of the 6th Army only on the 12th of

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1 August 1939?

2 A Yes.

3 Q But on August 10, 1939, didn't you issue a
4 special declaration addressed to the newly formed
5 6th Army?

6 A I do not know. I do not know the date of
7 the organization of the 6th Army. My order to take
8 over the post of the Commander of the 6th Army was
9 received by me on August 1.

10 Q Did you personally issue any declaration
11 addressed to the units of the 6th Army?

12 A I do not understand the question. I don't
13 think I issued any particularly formal statement.

14 Q Didn't you issue an address in which you
15 stated that the main purpose of the 6th Army was
16 that each should complete its task in the Nomanhan
17 area?

18 A The duty of the 6th Army was to continue the
19 duty which was undertaken by the 23rd Division, that
20 is, guarding -- that is, to guard the border. That
21 was my belief.

22 Q I ask you to make an effort to try to remem-
23 ber the course of events as it was at that time.

24 Did not you issue special address to the
25 units of the army in which you stated that the

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1 events in which the army had participated exceeded
2 the limits of the -- exceeded the limits of a
3 border incident?

4 A No.

5 Q I will try to refresh your memory. Didn't
6 you say in a special statement addressed to the army
7 units that the army -- and which was signed by you,
8 that the army was thrown into the whirlpool -- into
9 a whirlpool of unorderly fighting in the Nomanhan
10 area on the border between Mongolia and Manchuria?

11 A I do not know. I have no recollection.

12 Q You don't remember it or you refuse that
13 you did issue this statement?

14 THE PRESIDENT: He says he doesn't remember.

15 A I cannot understand the real purport of the
16 question. It is entirely unclear to me.

17 THE PRESIDENT: The English version appeared
18 unclear to me too. I think you had better put the
19 question again, Colonel.

20 Q I asked you: Did you not issue on September
21 5 a special address entitled "A Proclamation by the
22 Commander of the 6th Army"?

23 A I don't think so.

24 Q Then, I ask you whether this proclamation
25 contained the two following sentences: First:

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1 "The state of affairs is such that we went beyond
2 the limits of a simple border incident"; and second:
3 "The army was thrown into a whirlpool of unorderedly
4 fighting on the Mongolian-Manchurian border."

5 THE PRESIDENT: "Disorderly" is the word.

6 A On the 6th of September an order in the
7 name of the Imperial Command came from the Imperial
8 General Headquarters to cease fighting, and this
9 being the day, that is, September 5 -- it being
10 the day before the arrival of that order -- such
11 an Imperial Command order having been received on
12 the 6th of September, I don't think there was any
13 opportunity to give such instructions on the 5th
14 of September, that is, the day before.

15 THE PRESIDENT: "We will adjourn until half-
16 past nine tomorrow morning.

17 (Whereupon, at 1600, a recess was
18 taken until Tuesday, the 27th of May, at 0930.)
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